

PUBLIC BODIES APPEAL TRIBUNAL

Det 21 of 2014

□ An appellant cannot contest the promotion of a colleague before her if the Scheme of Service does not refer to any academic qualification and he is her senior. Further if someone is on leave, there is always a risk that he will rank after the others on resumption of duty

The Appellant is contesting the appointment of the Co-Respondent to the post of SHER.

Appellant's Case

The Appellant averred in her Statement of Case that she joined the public service in ... as CHWR in the Ministry of ... and was confirmed in her post in that same year. In ..., she was appointed Assistant SHER in the same Ministry. She obtained in September ..., a *Diplôme* from a French University

In March ..., her spouse obtained a scholarship for study in ... and she applied for and obtained leave to accompany her spouse for three years. While in ..., she studied and obtained a B.A. (Hons) in ... She resumed duty in the Ministry in ... and in October 2005 she was promoted SHER with effect from ...

Later, the Appellant averred that she came to know that the Co-Respondent had been offered promotion to the post of SHER. She stated that the said post was filled by promotion as per the Scheme of Service effective since Since she was senior to the Co-Respondent with regard to the date of entry and confirmation in the public service, and she was better qualified than the Co-Respondent who did not possess any post-secondary qualifications, she should have been appointed.

By appointing the Co-Respondent, the Appellant submitted that the Respondent failed in its duties and its decision was "manifestly unfair, unreasonable, unjustified and given the absence of transparency, arbitrary".

The Appellant sought redress from the Tribunal.

Respondent's Case

The Respondent averred that the Appellant was appointed temporary CHWR on ... and was appointed CHWR on ... She was appointed Assistant SHER on ...

The Appellant was promoted to the grade of SHER with effect from ..., the date on which she resumed duty on her return from India vice a vacancy which occurred on ... This decision was conveyed to her in a letter from her Ministry.

The Respondent explained the procedure that led to the appointment of the Appellant to the grade of SHER. The Respondent stated that in ... the Responsible Officer (RO) had recommended four officers for promotion to that post, but, as the first person recommended decided to proceed on retirement, the RO made a fresh recommendation on ... The RO was informed by Respondent on ... that it had decided to appoint the four Assistant SHER in a substantive capacity.

The Respondent further averred that prior to the PRB Report 2008, the effective date for grade to grade promotion was as from the date of vacancy even if the officer was on leave without pay not exceeding two years.

However, the Appellant was on leave for more than two years. She was promoted as from the date she resumed duty. Her seniority was thus altered and she ranked after the three other recommended officers. The four officers were informed of their appointment. The Appellant had not contested her change in ranking there and then.

When the post of SHER was filled in ..., the Co-Respondent was appointed as he was 1st on the seniority list and there was only one vacancy. He was appointed as the post was filled by promotion as per the prescribed Scheme of Service.

The Respondent submitted that the Appellant was no longer senior when she was appointed SHER as explained.

The appointment of the Co-Respondent could not be contested and the appeal should be set aside.

Determination

In this appeal the Respondent had raised a point of law to the effect that the Appellant had lost her seniority over the Co-Respondent when there was an

appointment to the grade of SHER earlier. The Appellant did not contest this change in ranking at that time and cannot do so now in this present appeal.

The Tribunal has listened to the arguments on this point of law and has given a ruling (GR 03 of 2014) to the effect that the change in ranking cannot be challenged as it would be outside the statutory time limit. However, the Tribunal agreed to hear this appeal on the merits to give the Appellant an opportunity to show why the Co-Respondent did not deserve promotion, other than the seniority issue. The Appellant was not allowed to adduce any evidence to challenge the previous appointment exercise which was time-barred.

When the appeal was heard on the merits, there were many points raised concerning the leave without pay taken by the Appellant, the fact that she resumed work one week after the due date for her to do so, resulting in that one extra week overseas being reckoned as unauthorized leave, that she was not informed as to the consequence of her taking leave over two years when, and if, a promotion opportunity should arise. However, these have been adequately addressed when the point of law was discussed and the ruling of the Tribunal was given. It is also clear that the fact that Appellant resumed work one week after her authorized leave had no impact on the effective date of her appointment as this was a promotion exercise and the seniority ranking had been established earlier.

The only issue which has a bearing on the intention of the Tribunal to hear more on the reasons why the Appellant is contesting the appointment other than the seniority issue is the qualifications of the Appellant. The Appellant argues that she has better qualifications than the Co-Respondent as she explained in her Statement of Case. According to her, the Co-Respondent does not even have post-secondary qualifications. She avers that before the Scheme of Service for SHER was amended, there was a requirement for a specific qualification but this was removed in the Scheme of Service for the grade of SHER and put in the entry grade of Assistant SHER.

However, for the filling of the post of SHER, which is the object of this appeal, the Respondent is bound by the prescribed Scheme of Service and the additional

qualifications of the Appellant cannot play in her favour as the post is filled on the basis of seniority and the Co-Respondent is fully eligible for appointment.

In the absence of evidence to counter the appointment of the Co-Respondent, there is nothing left for further consideration by this Tribunal.

This Tribunal wishes to draw the attention of the Respondent on the lack of information about the PSC circulars and other general information which can better inform public officers of their rights and the consequences of their decisions. A cursory look at the Respondent's website reveals the paucity of such information. On the other hand, it is also noted that public officers do not consult their HR colleagues and seek information on their seniority ranking and such matters. The Tribunal feels that many appeals would not have come before it, had there been a proper information network and if public officers could easily resort to such information.

The appeal is set aside.